

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 17115 of 2006

DATED: 21.8.2006

Between:

Venugopal

petitioner

And

The Industrial Tribunal-I,
Rep by its Chairman, Chandravihar Buildings,
1st floor, M.J. Road, Hyderabad and another

Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

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WRIT PETITION NO. 17115 of 2006

ORAL ORDER:

The present writ petitioner is filed questioning the award of the Industrial Tribunal in I.D. No. 97 of 2001 dated 3.12.2004 insofar as denying the backwages and continuity of service and treating the period from date of removal to the date of posting as leave without pay.

The petitioner was appointed as Security Guard in the respondent corporation. He was charge sheeted for unauthorized absence from 3.6.1994 onwards and for leaving the head quarters without obtaining prior permission. The petitioner submitted explanation stating the he was unwell and undergone treatment and produced a medical certificate. Having not satisfied with the explanation offered by the petitioner, an enquiry was ordered and ultimately by orders dated 16.2.1995 the petitioner was removed from service. Aggrieved by the same the petitioner raised an Industrial Dispute and the same was registered as I.D. No. 97 of 2001 on the file of the Industrial Tribunal-I, Hyderabad.

The Tribunal on consideration of the matter, partly allowed the petition ordering for reinstatement into service without back wages.

The operative portion of the award reads as under:

“In the result, allowed the petition partly setting aside the removal order dated 16.2.1995 passed against petitioner while directing the respondent to reinstate the petitioner into service without backwages. From the date of removal till the date of

posting orders as per this Award it should be considered as the petitioner was on leave without pay and the said period should not be taken for counting the length of service, and at the same time his past service should not be ignored for fixing his retirement benefits at the end of the service. Both sides should bear their own costs.”

Before the Tribunal, the respondent corporation filed a counter affidavit indicating the lapses committed by the petitioner on the earlier occasions and the punishments imposed on him. It is stated that the petitioner without obtaining prior permission left the Headquarters and on issuance of final notice to his residential address reported to duty producing private medical certificate on 2.12.1994 covering the period of absence stating that he was sick. Thereafter the petitioner was directed to APSRTC Tarnaka Hospital, and the Medical Officer by letter dated 3.12.1994 informed that the medical certificate produced by the petitioner is not acceptable. Then a charge sheet was issued and after conducting regular enquiry wherein the petitioner was found guilty of the charges alleged against him, the authority imposed the penalty of removal from service. It is also stated that the appeal preferred by the petitioner was considered and rejected on 20.11.1997.

Before the Tribunal the petitioner filed a memo informing that the domestic enquiry was conducted following the principles of natural justice but the findings of the enquiry officer are perverse. When the matter was posted for arguments on 3.12.2004, the petitioner was called absent and there was no representation on his behalf. Hence, the Tribunal decided to dispose of the matter based on the material available on record.

The Tribunal on consideration of the matter observed that the petitioner failed to explain the reasons for not availing the treatment

offered by the APSRTC hospital and the super speciality hospitals available in the city of Hyderabad and chosen to undergo treatment elsewhere. The Tribunal rejected the contention of the respondent corporation that unauthorized absence of petitioner caused loss to organization and partly allowed the petition modifying the punishment and ordering for reinstatement.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of Certiorari are limited to—firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

In the present case the petitioner admitted that the enquiry was conducted in fair manner, however disputed the findings based on which the removal order was passed. The Tribunal on consideration of the matter, recorded a finding that the medical certificate produced by the petitioner was rightly not accepted by the APSRTC Medical Officer and upheld the findings of enquiry officer holding the petitioner guilty of charge. For the proved misconduct, the Tribunal, in its discretion modified the punishment and ordered for reinstatement into service and partly allowed the petition.

Until and unless the writ petition shows any disproportionality in imposing the penalty or it shocks the conscience of the Court this Court cannot exercise its discretion or interfere with the quantum of

penalty. In **DIVISIONAL CONTROLLER, KSRTC (NWKRTC) Vs.**

A.T.MANE ^[1], the Apex Court held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and Courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

For the foregoing reasons, the petitioner has not made out any case for interference of this Court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. The writ petition fails and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

N.V.RAMANA,J

DATE 21.8.2006

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[\[1\]](#) 2005 (3) SCC 254